

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: U S WEST COMMUNICATIONS, INC., n/k/a QWEST CORPORATION	DOCKET NOS. INU-00-2 SPU-00-11
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**CONDITIONAL STATEMENT REGARDING
JUNE 11, 2001, REPORT
"THIRD REPORT"**

(Issued October 31, 2001)

On February 10, 2000, the Utilities Board (Board) issued an order initiating an investigation relating to the possible future entry of U S WEST Communications, Inc., n/k/a Qwest Corporation (Qwest), into the interLATA market. The investigation was identified as Docket No. INU-00-2.

In a filing dated May 4, 2000, Qwest encouraged the Board to consider a multi-state process for purposes of its review of track A (competition issues)¹, various aspects of each item on the 14-point competitive checklist, § 272 (separate subsidiary) issues, and public interest considerations. The Board considered the concept of a multi-state process for purposes of its review of a Qwest §271 application, sought comment, and subsequently issued an order dated August 10, 2000, indicating that its initial review of Qwest's compliance with the requirements of 47 U.S.C. § 271 would be through participation in the multi-state workshop process with the Idaho Public Utilities Commission, North Dakota Public Service Commission,

¹ See 47 U.S.C. § 271(c)(1)(A).

Montana Public Service Commission, Utah Public Service Commission, and the Wyoming Public Service Commission. Since the time of that order, the New Mexico Public Regulation Commission has also joined in the workshop process.

A third report was filed with the Board on June 11, 2001, by The Liberty Consulting Group² addressing emerging services, including line sharing, subloop unbundling, packet switching, and dark fiber, identifying over 50 issues that were discussed during the workshop process. Of those issues, two were deferred to future workshop discussions or to state-specific proceedings and approximately 20 issues were listed as being at impasse.

Qwest filed written testimony addressing emerging services on November 20, 2000. On December 20, 2000, the following participants filed testimony: The Wyoming Consumer Advocate Staff; AT&T Communications of the Mountain States, Inc., AT&T Communications of the Midwest, Inc., and TCG Affiliates (collectively AT&T); Information Services Division, Department of Administration, State of Montana; Rhythm Links, Inc. and New Edge Networks, Inc. (joint comments); and the New Mexico Advocacy Staff. Qwest filed rebuttal testimony on January 5, 2001, an open issues matrix on January 8, 2001, and a supplemental affidavit on January 9, 2001. AT&T filed an additional statement regarding dark spectrum on February 20, 2001.

² The Liberty Consulting Group (Liberty) is an outside consultant retained by the state commissions collectively.

Following the conclusion of workshops, Qwest filed the SGAT language related to the emerging services issues, on March 20, 2001. According to the procedures being utilized in the multi-state process, this "frozen" SGAT language is intended to reflect language on which there is general agreement among the participants and language proposed by Qwest to address issues or language where there is not general agreement.

Pre-report briefs were filed by Qwest, AT&T, Sprint, Rhythms Links, and the Wyoming Consumer Advocate Staff on or about April 30, 2001.

The report filed June 11, 2001, separately discussed those issues initially identified by participants but seemingly resolved during the process, and those issues that remained subject to disagreement (or where it was not clear that agreement had been reached). For those issues that remained subject to disagreement, the report summarized the participants' positions and provided recommended resolutions.

The following participants to the multi-state workshop process filed comments relating to the June 11, 2001, report: Qwest, AT&T, Idaho Public Utility Commission Staff; Wyoming Consumer Advocate Staff, and New Mexico Public Regulation Advocacy Staff. These post-report comments were filed on or about June 21, 2001.³

For those issues where agreement has been reached, the Board is prepared to indicate at this time its conclusion that Qwest has conditionally satisfied the

³ Report No. 3 and its appendices, including Qwest's "frozen" SGAT language for the checklist items at issue, are available at www.libertyconsultinggroup.com/six.htm, the Internet website established for the multi-state workshop proceeding, under the link "Workshop Number 2." Also available at that link are the filings with respect to these checklist items as well as the transcripts of the workshops.

checklist requirements in the areas identified by the June 11, 2001, report. To the extent that some of these issues are to be further evaluated in the Regional Oversight Committee's (ROC) Operations Support Systems (OSS) test, or some other proceeding, the Board will incorporate that evidence into its final recommendation to the Federal Communications Commission (FCC) as to whether Qwest has fully complied with a checklist requirement. To the extent that an issue requires performance of some duty or activity on Qwest's part, Qwest will need to demonstrate that it adequately performs as expected in order for the Board to make a positive recommendation to the FCC following an application filed by Qwest.

After reviewing the June 11, 2001, report, the testimony, pre-report briefs, and post-report comments filed by those interested participants, the Board finds that no further proceedings are necessary to reach a conditional determination on those issues that remain subject to disagreement regarding the emerging services issues.

In discussing the Board's conditional recommendations on the remaining impasse issues, the numbering system utilized in the June 11, 2001, report will be followed.

IMPASSE ISSUES

Line Sharing

1. Ownership of and Access to Splitters (Report p. 15; Qwest pre-report brief pp. 25-26)

The Board will adopt the recommendation from the June 11, 2001, report.

2. Tying Qwest Data Service and Voice Service (Report pp. 15-17; Qwest pre-report brief pp. 20-22; AT&T pre-report brief pp. 23-25; AT&T post-report comments p. 15)

This issue no longer appears to be disputed. The Board will treat this issue as if it were initially designated as a resolved issue in the June 11, 2001, report.

3. Line Sharing Over Fiber Loops (Report pp. 18-19; Qwest pre-report brief pp. 16-20; AT&T pre-report brief p. 25; AT&T post-report comments pp. 15-17)

AT&T argues that Qwest is not obligated under the SGAT language proposed to provide line sharing over fiber loops. According to AT&T, as well as Rhythms and New Edge, the FCC made it clear that Qwest has an obligation to provide line sharing over the fiber portion of loops in its *Line Sharing Reconsideration Order*, which states at paragraph 10:

We clarify that the requirement to provide line sharing applies to the entire loop, even where the incumbent has deployed fiber in the loop (e.g., where the loop is served by a remote terminal). Our use of the word "copper" in section 51.319(h)(1) was not intended to limit an incumbent LEC's obligation to provide competitive LECs with access to the fiber portion of a DLC loop for the provision of line-shared xDSL services.⁴

Qwest argues that there is no apparent dispute over the fact that line sharing over digital loop carrier and fiber would cause garbled signals, and thus it is not technically feasible to line share except on a copper loop. According to Qwest, the

⁴ *Deployment of Wireline Services Offering Advanced Telecommunications Capability; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147, 96-98, FCC 01-26 ¶ 10 (rel. Jan. 19, 2001) ("*Line Sharing Reconsideration Order*").

FCC has merely recognized the possibility of line sharing over fiber portions of loops.⁵ Qwest's proposed SGAT language is as follows:

9.4.1.1 To the extent additional line sharing technologies and transport mechanisms are identified, and Qwest has deployed such technology for its own use, and Qwest is obligated by law to provide access to such technology, Qwest will allow CLECs to line share in that same manner, provided, however, that the rates, terms and conditions for line sharing may need to be amended in order to provide such access.

Liberty, in the June 11, 2001, report agrees with Qwest and recommends that its proposed SGAT language be adopted, indicating that the "only argument against its general propriety would be that it fails to deal on a routine basis with other technologies and methods already proven to be feasible for providing line sharing over fiber facilities."⁶

In its post-report comments AT&T continues to disagree with Qwest and in turn the Liberty recommendation, calling Qwest's proposed SGAT language nothing more than a "paper promise." AT&T urges the Board to modify the section so that it is clear that the provision permits access to technically feasible methods of line sharing. AT&T proposes the following SGAT section 9.4.1.1:

To the extent additional line sharing technologies and transport mechanisms are identified, Qwest will allow CLECs to line share in that manner, provided, however, that (i) the rates, terms and conditions for line sharing may need to be amended and (ii) if Qwest demonstrates that such line sharing method is not technically feasible, Qwest need not afford the access identified.

⁵ Qwest pre-report brief at 17.

⁶ June 11, 2001, report at 19.

The Board is concerned that the language as proposed by Qwest and recommended by Liberty may have an undesired effect of limiting line sharing until such time as Qwest has deployed a technology, thereby limiting a CLEC's ability to deploy new technologies. The language proposed by AT&T for SGAT section 9.4.1.1 as shown above should be incorporated into the final SGAT to replace the proposed language of Qwest.

4. Provisioning Interval (Report pp. 19-22; Qwest pre-report brief pp. 22-25; AT&T post-report comments pp. 17-18)

The issue of how many days Qwest should be allowed to provision line sharing was an issue that was raised by Rhythms Links, Inc. during the multi-state process. Rhythms did not file any testimony, briefs, or comments with the Board. After the issuance of the June 11, 2001, report, AT&T filed comments asking that the recommendation of Liberty, which concurred with the Qwest proposal of five days but added some conditions, be reduced to an express provision to be included in the SGAT. Additionally AT&T requests that additional language describing an express process to determine whether the conditions have been met be incorporated into the SGAT.

This issue was not one raised by a participant to this (Iowa) proceeding. It appears that AT&T agrees (at least in substance) with the five-day provisioning of line sharing that Qwest has agreed to. The Board does not see any need to reach a conclusion on this issue.

Subloop Unbundling

1. Subloop Access at MTE Terminals (Report pp. 27-30; Qwest pre-report brief pp. 37-40; AT&T pre-report brief pp. 42-46; AT&T post-report comments p. 4)

The Board notes that this issue is an extension of the impasse issue Cross Connections at Multi-Tenant Environments previously discussed in the Conditional Statement issued October 12, 2001.⁷

AT&T argues that technically feasible points for gaining access to subloops include accessible terminals at multi-tenant environments (MTEs) and questions that the proposed SGAT language of Qwest is consistent with FCC rules addressing network interface device (NID) access. AT&T cites the *UNE Remand Order* paragraph 233, which describes the NID as including:

[A]ll features, functions, and capabilities of the facilities used to connect the loop distribution plant to the customer premises wiring, regardless of the particular design of the NID mechanism.

This redefinition of the NID by the FCC, according to AT&T, has special significance in the context of MTEs. It closes a gap CLECs previously had in reaching customers in cases where ILECs own or control the on-premises wiring that extends between the NID and wiring of the landlord, building owner, or presumably the end user. This change in the definition makes the NID the physical device connecting distribution plant with premises wiring when related to MTEs.

⁷ See Conditional Statement Regarding May 15, 2001, Report, pp. 19-22. In that conditional statement, the Board denied AT&T's request to change SGAT section 8.1.1.8.1 and indicated that any changes regarding subloop unbundling would be considered in its review of SGAT section 9.3.

The proposed SGAT language of sections 9.3.5.5.2.1.2 and 9.3.5.5.2.1.5 filed by Qwest require "cross-connect collocation" of a field connection point (FCP), and allow Qwest 90 days, or longer, to install the "cross-connect collocation." Qwest's proposal also subjects the CLEC to charges for the collocation installation. This provisioning time differs dramatically when compared to the situation where a CLEC accesses a terminal inside or attached to a MTE, where no collocation is required. In that situation, the provisioning periods and costs to access end-use customers are reduced substantially.

Qwest alternatively cites paragraph 234 of the *UNE Remand Order* as supportive of its conclusion that the NID is equivalent to the demarcation point between "carrier and customer premises facilities." According to Qwest, seeking a different definition of the NID is aimed at avoiding the FCC Rule 319(a)(2)(D) provision that the subloop access is subject to FCC collocation rules. Qwest does agree to waive collocation requirements at MTE terminals inside buildings, but continues to assert that CLECs must comply with collocation rules when gaining access to subloop elements at accessible terminals, which it asserts includes MTE terminals.

The Board notes that detached terminals are Qwest premises, while "demarcation points" and NIDs are not located in Qwest premises, but are located in privately-owned MTEs. At Qwest's detached terminals, the CLEC is clearly accessing subloops. This wiring, or subloop, between the detached terminal and MTE are Qwest's facilities. After Qwest provides the initial cross-connect collocation

at a detached terminal, it is Qwest, not the CLEC that provides any subsequent jumpers when a CLEC orders service.⁸ On the other hand, at the NID, the CLEC is accessing privately-owned inside wiring – not a subloop since it is not part of Qwest's facilities.

In its resolution of this issue, Liberty suggested a framework that would allow the development of access solutions prior to a time "when live customers are waiting for service," by addressing access issues in advance on a case-by-case basis.⁹

In post-report comments AT&T claims the proposed framework has three flaws. According to AT&T it ignores the redefinition of the NID in the *UNE Remand Order*, it would allow Qwest the opportunity to create standard terms and conditions every time a CLEC confronted a new configuration in Qwest's network, and might require a CLEC technician to consult with attorneys to determine whether particular terminals are covered by the SGAT. According to its comments AT&T is concerned that this

⁸ Qwest pre-report brief at p. 36.

⁹ Liberty proposed the following SGAT language:

(a) For any configuration not specifically addressed in this SGAT, the conditions of CLEC access shall be as required by the particular circumstances. These conditions include: (1) the degree of equipment separation required, (2) the need for separate cross-connect devices, (3) the interval applicable to any collocation or other provisioning requiring Qwest performance or cooperation, (4) the security required to maintain the safety and reliability of the facilities of Qwest and other CLECs, (5) the engineering and operations standards, or practices necessary to assure the safe and reliable operation of all carriers' facilities.

(b) Any party may request, under any procedure provided for by this SGAT for addressing non-standard services or network conditions, the development of standard terms and conditions for any configuration(s) for which it can provide reasonably clear technical and operational characteristics and parameters. Once developed through such a process, those terms and conditions shall be generally available to any CLEC for any configuration fitting the requirements established through such process.

approach would delay facilities-based entry and recommends the Board adopt language eliminating collocation requirements at any subloop point of interconnection and giving CLECs the right to re-terminate wiring when service has been ordered.

The Board agrees with the concerns raised by AT&T about the potential for delays created by the resolution proposed by Liberty. The record indicates that the most pressing issues regarding subloop access for CLECs is access with the MTE. Those issues were resolved and reflected in Qwest's March 20, 2001, SGAT filing. The framework recommended by Liberty, although fully addressing the issue, is too cumbersome to be useful and is likely to cause unnecessary delays. The Board finds the language as originally proposed by Qwest in the March 20, 2001, SGAT filing to be the appropriate resolution to this issue.

2. Requiring LSRs for Access to Premise Wiring at MTE's (Report p. 30; Qwest pre-report brief pp. 41-46 ; AT&T pre-report brief pp. 42-51; AT&T post-report comments p. 6)

AT&T suggests that requiring it to submit a local service request (LSR) is discriminatory in that Qwest is not required to submit an LSR to access a subloop. AT&T proposed that CLECs submit to Qwest a statement specifying the cable and pair employed by the CLEC and the address of the MTEs in which the CLEC has obtained access. Aggregation for all subloops accessed by the CLEC at an MTE

(c) Prior to the development of such standard terms and conditions, Qwest shall impose in the six areas identified in item (1) above only those requirements or intervals that are reasonably necessary.

terminal should be permitted, with the information to be provided by CLECs to Qwest on a monthly basis.

Qwest argues the LSR is an industry standard process for wholesale orders. The ordering and billing forum (OBF), a national industry group, is currently in the process of developing an LSR for ordering subloops, which will require information similar to that CLECs must provide when ordering unbundled loops.¹⁰

According to Qwest, requiring an LSR will allow CLECs to validate the interconnection point information against Qwest's systems to ensure that it is valid and will be accepted. The LSR contains information Qwest requires for billing, tracking inventory, and identifying the circuit for maintenance and repair purposes. Timely submission of the LSR is required so that Qwest can satisfy its obligations to manage and maintain its network and to bill and recover the payment to which it is entitled for the element. Qwest also alleges both CLEC and Qwest customers will be adversely affected by the lack of a timely LSR due to the resultant inaccuracies in Qwest's systems, which would impede Qwest's repair efforts.

Qwest also advises the absence of an LSR would dramatically increase Qwest's costs by requiring it to build manual processes into its billing flow in order to ensure accurate billing out of the usual monthly flow.

Liberty noted that LSRs provide an efficient means of providing Qwest's billing systems needed information, and comparable manual methods would not be

¹⁰ Transcript pp. 153-54, February 28, 2001.

efficient. Liberty recommended a modification to streamline the LSR process in Qwest's SGAT, as follows:

For access to Qwest's on-premises MTE wire as a subloop element, a CLEC shall be required to submit an LSR, but need not include thereon the circuit-identifying information or await completion of LSR processing by Qwest before securing such access. Qwest shall secure the circuit-identifying information, and will be responsible for entering it on the LSR when it is received. Qwest shall be entitled to charge for the subloop element as of the time of LSR submission by CLEC.

This proposed resolution would save CLECs the burden and costs associated with entry of the circuit-identifying information. It would also reduce CLEC provisioning times for connecting and providing service delivery.

In its post-report comments AT&T indicates that the recommendation by Liberty does not alleviate its concerns regarding the discriminatory aspect of LSRs and asks that the Board continue to explore alternative methods of accessing subloops including its proposed SGAT recommendations.

Although the Board agrees that CLECs must provide LSRs while Qwest does not, AT&T's claim of discrimination appears to lack real merit. Qwest must be able to obtain adequate information to maintain an efficient billing system, reliable inventory counts, network management, and repair services. AT&T has made no proposal that would provide these assurances. The Board will adopt the recommendation from the June 11, 2001, report.

3. CLEC Facility Inventories (Report p. 33; Qwest pre-report brief p. 46; AT&T pre-report brief pp. 51-54; AT&T post-report comments p. 8)

SGAT section 9.3.3.5 requires that Qwest inventory CLEC cable and pair terminations at MTEs. The impasse is not whether an inventory needs to take place, but rather the timing of the inventory and what company should bear the cost of maintaining the inventory.

AT&T proposed that Qwest, at its expense, mark its owned or controlled on-premises wire and related facilities, tagging each cable pair currently being used by Qwest to serve an end user. AT&T also objects to Qwest charges for inventorying CLEC facilities under SGAT section 9.3.6.4.1.

Qwest urges that the inventory needs to be completed before, rather than after, CLECs have completed their installation processes, because the inventory is a prerequisite to LSR issuances. Qwest argues that the service delay impact of a five-day interval for inventories is mitigated because it need only be done once per MTE.

Liberty recommended that Qwest could complete the inventory during the LSR suspense period. Both AT&T and Qwest agreed to this recommendation.

AT&T, in its post-report comments, points out that the Liberty recommendation did not address its concern over the responsibility for the cost of the inventory. AT&T argues that Qwest is already obligated to keep adequate records regarding their inventory of MTE terminals and urges the Board to strike SGAT section 9.3.6.4.1.

The Board will adopt the recommendation from the June 11, 2001, report related to the completion of the inventory during the LSR suspense period. The Board agrees with AT&T that charging the CLECs for the cost of the inventory is

inappropriate. Qwest is already obligated to keep adequate records regarding their inventory of MTE terminals and it is not reasonable to charge the CLECs for this inventory. Section 9.3.6.4.1 of the SGAT should be struck.

4. Determining Ownership of Inside Wire/Intervals (Report pp. 34-35; Qwest pre-report brief p. 47; AT&T pre-report brief pp. 54-57; AT&T post-report comments pp. 8-10)

Initially there was a dispute as to responsibility for the costs involved in investigating ownership of inside wiring of an MTE. Ultimately, it was agreed by the participants that Qwest was responsible for the costs, leaving only an issue for resolution involving the interval for CLEC access to the MTE.

Qwest's proposed SGAT language provides Qwest ten calendar days to give the CLEC the ownership information. AT&T argues that ten days is too long to track down the information needed to determine ownership.

AT&T proposed that a CLEC should be permitted to ask the individual MTE owner whether it owned the inside wiring, if receiving an affirmative response, the CLEC could then access the wiring at the NID. According to AT&T this alternative would save time and keep Qwest's role limited in the arrangement. AT&T suggests that if Qwest and the MTE owner are in dispute over ownership of the inside wiring, the CLEC could obtain access notwithstanding the dispute. AT&T also suggests that when ownership has already been confirmed from previous access to the same MTE, or where a different CLEC already has access to the MTE, then the interval from Qwest should be cut to one day.

Liberty recommends a solution that appears to be a middle ground, by proposing to add the following to the proposed SGAT section 9.3.5.4.1:

In the event that there has been a previous determination of on-premises wiring ownership at the same MTE, Qwest shall provide such notification within two (2) business days. In the event that CLEC provides Qwest with a written claim by an authorized representative of the MTE owner that such owner owns the facilities on the customer side of the terminal, the preceding ten (10) day period shall be reduced to five (5) calendar days from Qwest's receipt of such claim.

In its post-report comments AT&T agreed that the recommendation was more appropriate that Qwest's proposed language, while still expressing the view that it unnecessarily delays CLEC entry into MTEs.

The proposed resolution of Liberty appears to be reasonable. The Board will adopt the recommendation from the June 11, 2001, report.

5. Intervals (Report p. 34; Qwest pre-report brief pp. 48-50; AT&T pre-report brief 48)

The Board will adopt the recommendation from the June 11, 2001, report.

6. Requiring Qwest Performed Jumpering at MTEs (Report p. 36; Qwest pre-report brief pp. 50-52; AT&T pre-report brief pp. 58-65; AT&T post-report comments p. 10)

This issue is closely related to the previous issue, 1. Subloop Access at MTE Terminals. However, the issue at impasse is now related to who can actually perform the jumper cross connects in the MTEs if the element is a distribution element.

Qwest's proposed language requires that its own technicians perform the function of jumpering due to the fact that it is common practice with other RBOCs

(SBC and Verizon) who have received prior section 271 relief and it is consistent with Qwest's legal obligations.

AT&T argues that the FCC has clarified ILEC obligations with respect to subloop elements important to MTE access. AT&T also urges they should have access to any portion of a loop facility between two points of technically feasible access.

Liberty related its recommendation back to its recommendation on issue 1. Subloop Access at MTE Terminals. Liberty stated that CLECs could request authority as described in the recommendation on access. That recommendation provided for a case by case analysis of needs and circumstances associated with unique and varying outside plant configurations and conditions.

Although the Board did not agree with Liberty's recommendation as to issue 1. Subloop Access at MTE Terminals, it agrees that CLECs can only perform jumpering after such authority is granted by Qwest.

7. Expanding Explicitly Available Subloop Elements (Report pp. 37-38; Qwest pre-report brief pp. 52-56; AT&T pre-report brief pp. 66-67; AT&T post-report comments pp. 10-11)

This issue was deferred to the report on General Terms and Conditions.

Packet Switching

1. Availability of Spare Copper Loops (Report pp. 41-44; Qwest pre-report brief pp. 2-6; AT&T pre-report brief pp. 7-10)

The Board will adopt the recommendation from the June 11, 2001, report.

2. Denial of DSLAM Collocation (Report pp. 44-45; Qwest pre-report brief pp. 6-8; AT&T pre-report brief pp. 10-12)

The Board will adopt the recommendation from the June 11, 2001, report.

3. ICB pricing (Report pp. 45-46; Qwest pre-report brief pp. 15-16; AT&T pre-report brief pp. 17-21; AT&T post-report comments p. 18)

This issue is deferred to the report on General Terms and Conditions.

4. Unbundling Conditions as a Prerequisite to Ordering (Report pp. 46-47; Qwest pre-report brief pp. 8-12; AT&T pre-report brief pp. 21-22; AT&T post-report comments p. 18)

AT&T argues that SGAT section 9.20.4.1 could require CLECs to wait 90 days before learning that collocation has been denied. Only after the denial of collocation can a CLEC order packet switching as a UNE. AT&T contends that this potential for delay gives an unreasonable advantage to Qwest.

Liberty recommends that CLECs be allowed to simultaneously order both collocation and packet switching. Qwest has incorporated this recommendation into its compliance filing.

AT&T, in its post-report comments, appears to agree with the recommendation but states it "reserve[s] the right to review" Qwest's proposed compliance language. To date the Board is unaware of any filing by AT&T that would indicate that it has reviewed Qwest's proposed language and either agrees, or objects to the proposed SGAT section. Unless the Board is informed within 10 days of this conditional statement that a problem with the language exists, the Board will adopt the recommendation from the June 11, 2001, report, and the language proposed by Qwest in its compliance filing.

5. Line Card "Plug and Play" (Report pp. 47-48; Qwest pre-report brief pp. 15-16; AT&T pre-report brief pp. 21-22)

The Board will adopt the recommendation from the June 11, 2001, report.

Dark Fiber

1. Affiliate Obligations to Provide Access to Dark Fiber (Report pp. 52-55; Qwest pre-report brief pp. 27-33; AT&T pre-report brief pp. 27-32; AT&T post-report comments pp. 11-13)

AT&T contends that sections 251(c)(3) and 252(d)(1) of the Telecommunications Act of 1996 obligate Qwest to make the in-region dark fiber of affiliates available to CLECs. It argues that Section 251(c)(3) obligates ILECs to provide non-discriminatory access to network elements on an unbundled basis at any technically feasible point, and under rates and conditions that are fair, just, and reasonable. According to AT&T, Qwest and its affiliates comprise "successors and assigns" under Section 251(h) of the 1996 Act, which make them subject to ILEC unbundling duties.

Qwest contends that Qwest Corporation is the only US WEST successor that provides local telecommunications services in the seven-state region involved in this multi-state process. Additionally, Qwest asserts that other QCI affiliates do not meet the "successor or assign" requirements of §251(h) of the Act. The FCC has ruled that a "successor" for purposes of §251(h) occurs if there is a substantial enough continuity between the companies to allow a conclusion that one entity has stepped into the shoes of or replaced another.

Liberty states that the record contains no evidence that the Qwest corporate structure has been developed or is being used to deny access to dark fiber in cases

where it would, absent such structure, be required to be made available. Further, Liberty recommends that Qwest be required to provide access not only to what it owns directly, but to all dark fiber to which it has a right to access for local telecommunications use under agreements with any other party, affiliated or not.

In its post-report comments, AT&T seeks further modifications to the recommended language of Liberty. AT&T urges the Board to require CLECs be provided access to all UNEs provided to Qwest by Qwest's affiliates, to require Qwest to disclose to CLECs the agreement under which Qwest has obtained access to such facilities, and further require that if another entity provides a facility to Qwest for the provisioning of local service that contains only a restriction in the form of a term of years, a CLEC will be afforded access to the same extent that Qwest has been.

After considering AT&T's suggested additions to Liberty's recommendation, the Board will adopt the recommendation from the June 11, 2001, report.

2. Access to Dark Fiber in Joint Build Arrangements (Report pp. 55-56; Qwest pre-report brief p. 34; AT&T pre-report brief pp. 32-34)

The Board will adopt the recommendation from the June 11, 2001, report.

3. Applying a Local Exchange Usage Requirement to Dark Fiber (Report pp. 56-57; Qwest pre-report brief pp. 34-36; AT&T pre-report brief pp. 36-37; AT&T post-report comments p. 14)

The Board agrees with Liberty's statement that AT&T's argument is without foundation.

4. Consistency With Technical Publications (Report p. 57; AT&T pre-report brief pp. 36-37)

The Board will adopt the recommendation from the June 11, 2001, report.

SUMMARY

Assuming Qwest incorporates each of the recommendations as set forth above, verbatim, the Board is prepared to indicate at this time its conclusion that Qwest has conditionally satisfied each of the checklist requirements addressed in the June 11, 2001, report, subject to the same limitations noted earlier in this statement related to other proceedings and processes.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper _____
Executive Secretary

Dated at Des Moines, Iowa, this 31st day of October, 2001.